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7 **BEFORE THE**
8 **BOARD OF PHARMACY**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2762

12 **NALINEE L. AREEPONG**

**DEFAULT DECISION
AND ORDER**

13 Pharmacist License No. RPH 38357,

[Gov. Code, §11520]

14 Respondent.

15 **FINDINGS OF FACT**

16 1. On or about March 23, 2005, Complainant Patricia F. Harris, in her
17 official capacity as the Executive Officer of the Board of Pharmacy, filed Accusation No. 2762
18 against NALINEE L. AREEPONG (Respondent) before the Board of Pharmacy, Department of
19 Consumer Affairs, State of California (Board).

20 2. On or about March 22, 1984, the Board issued Pharmacist License No.
21 RPH 38357 to Respondent. The Pharmacist License was in full force and effect at all times
22 relevant to the charges brought herein and will expire on February 28, 2006, unless renewed.

23 3. On or about May 2, 2005, Rebeca Garcia, an employee of the Department
24 of Justice, served by Certified and First Class Mail a copy of the Accusation No. 2762, Statement
25 to Respondent, Notice of Defense, Request for Discovery, and Government Code sections
26 11507.5, 11507.6, and 11507.7 to Respondent's addresses of record with the Board, which were
27 P.O. Box 875, Montebello, CA 90640 and 101 North Verdugo Road, #9065, Glendale, CA
28 91206. Respondent updated her addresses of record with the Board on or about April 12, 2005.

1 Accordingly, on June 30, 2005, J. Baerresen, an employee of the Department of Justice, reserved
2 by Certified and First Class Mail a copy of the Accusation No. 2762, Statement to Respondent,
3 Notice of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and
4 11507.7 to Respondent's addresses of record with the Board, which were and are 145 North Fifth
5 Street #1731, Montebello, CA 90640 and 101 North Verdugo Road, #9065, Glendale, CA
6 91206. A copy of the Accusation, the related documents, and Declaration of Services are
7 attached as exhibit A, and are incorporated herein by reference.

8 4. Service of the Accusation was effective as a matter of law under the
9 provisions of Government Code section 11505, subdivision (c).

10 5. On or about May 25, 2005 and July 18, 2005, two of the aforementioned
11 documents were returned by the U.S. Postal Service. One document served on May 2, 2005, was
12 marked "Returned to Sender - Unclaimed." One document served on June 30, 2005, was marked
13 "Unknown at this PO Box. Name is not on Box application." A copy of the postal returned
14 documents are incorporated herein by reference.

15 6. Government Code section 11506 states, in pertinent part:

16 "(c) The respondent shall be entitled to a hearing on the merits if the respondent
17 files a notice of defense, and the notice shall be deemed a specific denial of all parts of the
18 accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of
19 respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

20 7. Respondent failed to file a Notice of Defense within 15 days after service
21 upon her of the Accusation, and therefore waived her right to a hearing on the merits of
22 Accusation No. 2762.

23 8. California Government Code section 11520 states, in pertinent part:

24 "(a) If the respondent either fails to file a notice of defense or to appear at the
25 hearing, the agency may take action based upon the respondent's express admissions or
26 upon other evidence and affidavits may be used as evidence without any notice to
27 respondent."

28 ///

9. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on Respondent's express admissions by way of default and the evidence before it contained in exhibit A, finds that the allegations in Accusation No. 2762 are true.

10. The total costs for investigation and enforcement are \$11,562.75, as of July 19, 2005.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent NALINEE AREEPONG has subjected her Pharmacist License No. RPH 38357 to discipline.

2. A copy of the Accusation and the related documents and Declaration of Service are attached.

3. The agency has jurisdiction to adjudicate this case by default.

4. The Board is authorized to revoke Respondent's Pharmacist License based upon the following violations alleged in the Accusation:

a. Business and Professions Code sections 4300 and 4301 [Failure to Maintain Records and Current Inventory].

b. Business and Professions Code sections 4300 and 4301 [Failure to Secure Prescription Area].

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ORDER

IT IS SO ORDERED that Pharmacist License No. RPH 38357, heretofore issued to Respondent NALINEE AREEPONG, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.


This Decision shall become effective on September 22, 2005.

It is so ORDERED August 23, 2005

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

50051702.wpd
DOJ docket number:LA2004600487

By


STANLEY W. GOLDENBERG
Board President

Attachments:

Exhibit A: Accusation No.2762, Related Documents, and Declaration of Service

Exhibit A

Accusation No. 2762,
Related Documents and Declaration of Service

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of the State of California
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6 Attorneys for Complainant

7
8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2762

12 **NALINEE L. AREEPONG**
145 North 5th Street, #875
13 Montebello, CA 90640

A C C U S A T I O N

14 Pharmacist License No. RPH 38357,

15 Respondent.

16
17 Complainant, Patricia F. Harris, Executive Officer of the California State Board of
18 Pharmacy, alleges as follows:

19 **PARTIES**

20 1. Patricia F. Harris ("Complainant") brings this Accusation solely in her
21 official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer
22 Affairs, State of California.

23 2. On or about March 22, 1984, the Board of Pharmacy issued Original
24 Pharmacist License No. RPH 38357 to Nalinee L. Areepong ("Respondent"). Respondent's
25 Original Pharmacist License has been valid at all times relevant to the charges brought herein and
26 will expire on or about February 28, 2006, unless such license is renewed.

27 **JURISDICTION**

28 3. This Accusation is brought before the Board of Pharmacy ("the Board"),

1 Department of Consumer Affairs, State of California, under the authority of the following laws
2 and regulations. All statutory references are to the Business and Professions Code ("the Code"),
3 unless otherwise indicated.

4 4. Section 4300 of the Code authorizes the Board to take disciplinary action
5 against the holder of any license issued by the Board, including suspension or revocation of that
6 license.

7 5. Section 4301 of the Code states, in pertinent part, as follows:

8 "The board shall take action against any holder of a license who is guilty of
9 unprofessional conduct or whose license has been procured by fraud or misrepresentation or
10 issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the
11 following:

12 ...

13 "(j) The violation of any of the statutes of this state or of the United States
14 regulating controlled substances and dangerous drugs.

15 ...

16 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or
17 abetting the violation of or conspiring to violate any provision or term of this chapter [Chapter 9
18 (commencing with section 4000 of the Code)] or of the applicable federal and state laws and
19 regulations governing pharmacy, including regulations established by the board."

20 6. Section 4081 of the Code states as follows:

21 "(a) All records of manufacture and of sale, acquisition, or disposition of
22 dangerous drugs or dangerous devices shall be at all times during business hours open to
23 inspection by authorized officers of the law, and shall be preserved for at least three years from
24 the date of making. A current inventory shall be kept by every manufacturer, wholesaler,
25 pharmacy, veterinary food-animal drug retailer, physician, dentist, podiatrist, veterinarian,
26 laboratory, clinic, hospital, institution, or establishment holding a currently valid and unrevoked
27 certificate, license, permit, registration, or exemption under Division 2 (commencing with
28 Section 1200) of the Health and Safety Code or under Part 4 (commencing with Section 16000)

of Division 9 of the Welfare and Institutions Code who maintains a stock of dangerous drugs or dangerous devices.

“(b) The owner, officer, and partner of any pharmacy, wholesaler, or veterinary food-animal drug retailer shall be jointly responsible, with the pharmacist-in-charge or exemptee¹, for maintaining the records and inventory described in this section.

“(c) The pharmacist-in-charge or exemptee shall not be criminally responsible for acts of the owner, officer, partner, or employee that violate this section and of which the pharmacist-in-charge or exemptee had no knowledge, or in which he or she did not knowingly participate.

“(d) This section shall become operative on July 1, 2001.”

7. Section 4113, subdivision (b), of the Code states the following:

“The pharmacist-in-charge shall be responsible for a pharmacy’s compliance with all state and federal laws and regulations pertaining to the practice of pharmacy.”

8. Section 4116, subdivision (a), of the Code states the following:

“No person other than a pharmacist, an intern pharmacist, an authorized officer of the law, or a person authorized to prescribe shall be permitted in that area, place, or premises described in the license issued by the board wherein controlled substances or dangerous drugs or dangerous devices are stored, possessed, prepared, manufactured, derived, compounded, dispensed, or repackaged. However, a pharmacist shall be responsible for any individual who enters the pharmacy for the purposes of receiving consultation from the pharmacist or performing clerical, inventory control, housekeeping, delivery, maintenance, or similar functions relating to the pharmacy if the pharmacist remains present in the pharmacy during all times as the authorized individual is present.”

1. In 2004, the Legislature amended section 4081 of the Code to substitute “exemptee-in-charge” for “exemptee” in subdivisions (b) and (c) of that statute. In addition, subdivision (d) of that statute was replaced with the following: “This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date.” (Stats 2004, ch. 695, § 31, p. 24; Stats. 2004, ch. 857, § 12.5, p. 12.)

1 9. “Controlled substance” as defined under section 4021 of the Code, “means
2 any substance listed in Chapter 2 (commencing with Section 11053) of the Division 10 of the
3 Health and Safety Code.”

4 10. Section 4022 of the Code provides, in pertinent part, that “dangerous
5 drug” means any drug that is unsafe for self-use in humans or animals, and includes the
6 following:

7 “(a) Any drug that bears the legend: ‘Caution: federal law prohibits
8 dispensing without prescription,’ ‘Rx only,’ or words of similar import.

9 ...

10 “(c) Any other drug . . . that by federal or state law can be lawfully dispensed
11 only on prescription or furnished pursuant to Section 4006.”

12 11. Section 1714 of the California Code of Regulations, title 16, states, in
13 pertinent part, as follows:

14 ...

15 “(b) Each pharmacy licensed by the board shall maintain its facilities, space,
16 fixtures, and equipment so that drugs are safely and properly prepared, maintained, secured and
17 distributed. The pharmacy shall be of sufficient size and unobstructed area to accommodate the
18 safe practice of pharmacy.

19 ...

20 “(d) Each pharmacist while on duty shall be responsible for the security of the
21 prescription department, including provisions for effective control against theft or diversion of
22 dangerous drugs and devices, and records for such drugs and devices. Possession of a key to the
23 pharmacy where dangerous drugs and controlled substances are stored shall be restricted to a
24 pharmacist.”

25 12. Section 1717, subdivision (g) of the California Code of Regulations, title
26 16, states the following:

27 “The pharmacy must have written procedures that identify each individual
28 pharmacist responsible for the filling of a prescription and a corresponding entry of information

1 into an automated data processing system, or a manual record system, and the pharmacist shall
2 create in his/her handwriting or through hand-initializing a record of such filling, not later than
3 the beginning of the pharmacy's next operating day. Such record shall be maintained for at least
4 three years."

5 13. Section 1718 of the California Code of Regulations, title 16, states the
6 following:

7 "Current Inventory' as used in Sections 4081 and 4332 of the Business and
8 Professions Code shall be considered to include complete accountability for all dangerous drugs
9 handled by every licensee enumerated in Sections 4081 and 4332.

10 "The controlled substances inventories required by Title 21, CFR, Section 1304
11 shall be available for inspection upon request for at least 3 years after the date of the inventory."

12 14. Section 118, subdivision (b) of the Code states as follows:

13 "The suspension, expiration, or forfeiture by operation of law of a license issued
14 by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or
15 by order of a court of law, or its surrender without the written consent of the board, shall not,
16 during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board
17 of its authority to institute or continue a disciplinary proceeding against the licensee upon any
18 ground provided by law or to enter an order suspending or revoking the license or otherwise
19 taking disciplinary action against the licensee on any such ground."

20 15. Section 125.3, subdivision (a) of the Code, states, in pertinent part, as
21 follows:

22 "Except as otherwise provided by law, in any order issued in resolution of a
23 disciplinary proceeding before any board within the department . . . , the board may request the
24 administrative law judge to direct a licensee found to have committed a violation or violations
25 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
26 enforcement of the case."

27 16. **CONTROLLED SUBSTANCES AND DANGEROUS DRUGS**

28 A. "Ambien" is the brand name for zolpidem tartrate, a sedative-hypnotic or

depressant that is indicated for the short-term treatment of insomnia. Such medication is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d)(32), and a dangerous drug as defined under Business and Professions Code section 4022.

B. "Vicodin" is the brand name for hydrocodone bitartrate and acetaminophen (5 mg/500 mg). Vicodin is a narcotic analgesic and acetaminophen that is indicated for the relief of moderate to moderately severe pain. Such combination of drugs is a Schedule III controlled substance pursuant to Health and Safety Code section 11056, subdivision (e), and a dangerous drug as defined under Business and Profession Code section 4022.

C. "Vicodin ES" is the brand name for hydrocodone bitartrate and acetaminophen (7.5 mg/750 mg). Vicodin ES is a narcotic analgesic and acetaminophen that is indicated for the relief of moderate to moderately severe pain. Such combination of drugs is a Schedule III controlled substance pursuant to Health and Safety Code section 11056, subdivision (e), and a dangerous drug as defined under Business and Professions Code section 4022.

D. "Lorcet" is the brand name for hydrocodone bitartrate and acetaminophen (10 mg/650 mg). Lorcet is a narcotic analgesic and acetaminophen that is indicated for the relief of moderate to moderately severe pain. Such combination of drugs is a Schedule III controlled substance pursuant to Health and Safety Code section 11056, subdivision (e), and a dangerous drug as defined under Business and Professions Code section 4022.

E. "Norco" is the brand name for hydrocodone bitartrate and acetaminophen (10 mg/325 mg). Norco is a narcotic analgesic and acetaminophen that is indicated for the relief of moderate to moderately severe pain. Such combination of drugs is a Schedule III controlled substance pursuant to Health and Safety Code section 11056, subdivision (e), and a dangerous drug as defined under Business and Professions Code section 4022.

FIRST CAUSE FOR DISCIPLINE

(Failure to Maintain Records and Current Inventory)

17. Respondent Naline L. Areepong is subject to discipline pursuant to sections 4300 and 4301, subdivisions (j) and (o) of the Code for failing to maintain records and a current inventory of controlled substances and dangerous drugs in violation of section 4081 of

the Code, in conjunction with California Code of Regulations, title 16, sections 1717, subdivision (g) and 1718. The circumstances regarding such unprofessional conduct are as follows:

a. Respondent has been the Pharmacist-in-Charge at Daily Drugs, which is located at 1336 West Whittier Boulevard in Montebello, California 90640, since on or about October 23, 2002. On or about July 18, 2003, an inspector for the Board of Pharmacy conducted an inspection of Daily Drugs. During the inspection on that day and thereafter, the inspector performed a drug audit of Schedules II, III and IV controlled substances and dangerous drugs, comparing acquisition, disposition and dispensing records. The audit revealed the following:

<u>Drug</u>	<u>Stock On Hand</u> <u>1/3/03</u>	<u>Purchased</u> <u>1/3/03 to 7/18/03</u>	<u>Dispensed</u> <u>1/3/03 to 7/18/03</u>	<u>Excess/</u> <u>Shortage (%)</u>
Ambien 5 mg	85 tablets	800 tablets	885 tablets	51 tablets
Ambien 10 mg	95 tablets	2,200 tablets	1,875 tablets	-32 tablets (10%)*
Vicodin 5 mg/500 mg	45 tablets	3,200 tablets	1,720 tablets	-1,368 tablets (89.70%)
Vicodin ES 7.5mg/750mg 2 tablets		5,200 tablets	2,914 tablets	-1,806 tablets (78.90%)
Lorcet 10 mg/650 mg	0 tablets	5,100 tablets	0 tablets	-4,100 tablets (100%)*
Norco 10 mg/325 mg	0 tablets	1,100 tablets	140 tablets	-920 tablets (95.80%)

*credits and drug losses reported re Ambien 10 mg (100 tablets) and Lorcet 10 mg/650 mg (1,000 tablets).

As the pharmacist-in-charge at Daily Drugs, Respondent failed to maintain records and a current inventory of all controlled substances and dangerous drugs at that pharmacy from on or about January 3, 2003 to July 18, 2003. During that period of time, there was an excess of Ambien 5 mg and shortages of several controlled substances and dangerous drugs, including Ambien 10 mg, Vicodin 5 mg/500 mg, Vicodin ES 7.5 mg/750 mg, Lorcet 10 mg/650 mg, and Norco 10 mg/325 mg. Respondent failed to maintain a complete accountability regarding all of those controlled substances and dangerous drugs and failed to maintain the required records for a period of at least three years.

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1 herein alleged, and that following the hearing, the Board of Pharmacy issue a decision:

2 1. Revoking or suspending Pharmacist License No. RPH 38357 that was
3 issued to Nalinee L. Areepong;

4 2. Ordering Nalinee L. Areepong to pay the Board of Pharmacy the
5 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
6 Professions Code section 125.3; and

7 3. Taking such other and further action as deemed necessary and proper.

8 DATED: 3/23/05

9
10 *P. J. Harris*

11 PATRICIA F. HARRIS

12 Executive Officer

13 Board of Pharmacy

14 Department of Consumer Affairs

15 State of California

16 Complainant

17 DOJ Matter ID: LA2004600487

18 areepong-nalinee.accusation.wpd